Omitting unnecessary details, the practice is that when an applicant thinks he is sufficiently competent to pass the required tests he makes an application to be examined at the Office of the Registrar of Motor Vehicles. Arrangements are then made for him to be examined by a driving tester who at the conclusion of the test gives a certificate to the effect that the person in question has been examined and that either he has passed or he has failed to pass the prescribed test. If the test has been passed the appropriate certificate is filed in the Office of the Registrar of Motor Vehicles and a driving licence is issued.

That is the practice that is followed and no doubt it is the practice that was contemplated when the Motor Vehicles (Driving Licence) Rules, 1959, were enacted. It is not, however, the practice which these Rules require, because as a matter of construction it is clear that the certificate of passing the test is to be furnished not by the tester to the Registrar but by the Registrar to the person passing the test and then delivered by that person back to the Registrar as evidence that he has passed the test. That would seem to be clear on a consideration of the rules.

Rule 7 provides that tests of competency are to be conducted by examiners appointed by the Commissioner for Road Transport. Rule 8 provides that any person desiring to be tested by such an examiner must apply to a Registrar of Motor Vehicles who is to arrange a time and place for a test.

Rule 10(1) provides that "any person passing the test shall be furnished with a certificate in form Number DL. 18 of the First Schedule" and rule 23 provides that the contents of this form are to be determined by the Commissioner for Road Transport. We have been shown a copy of this form which on the face of it provides for its being signed by the tester.

Rule 10(1), however, does not say by whom the certificate is to be furnished to the person passing the test. In the absence of anything more this might well be read as meaning that the certificate was to be furnished by the tester conducting the test. There is, however, something more. Rule 10(2) goes on to provide "if a certificate or statement so furnished by a Registrar is lost or destroyed, the person to whom it was furnished may obtain a duplicate copy" and sub-rule (3) provides that "an applicant for a licence, who is required to satisfy the Registrar that he has passed the test, shall deliver the certificate for retention by the Registrar".

On all this it is very possible, at least as a matter of common sense, that the intention was to provide that the tester who had passed a candidate for a licence should give him a certificate to that effect and that the candidate should then deliver it to the Registrar who is the functionary entrusted with the duty of issuing driving licences. That, however, is not what the rule says. In our view, as a matter of the ordinary usage of the English language, the words "so furnished by a Registrar" in sub-rule (2) of rule 10 make it clear, however absurd such a position would appear to be, that the certificate mentioned in sub-rule (1) is to be furnished by the Registrar. "So" is a word of reference (see *Giles* v. *Melsom* [1]) and in the circumstances it is impossible to say that "so furnished" does not mean the same as "which has been furnished".

On that interpretation, to which we see no alternative, it is quite clear that a certificate by a driving tester that a person has passed a driving test, as was signed by the present first applicant, is not a certificate which is "required by law to be given or signed" within the meaning of section 197 of the Penal Code. In the circumstances, therefore, we are bound to say that the first appellant did not commit that offence and accordingly the second and third appellants did not abet him in the commission of it. The convictions, therefore, cannot stand.

That, however, is not the end of the matter. The first appellant when he signed the certificate in the circumstances of the present case clearly made a false statement and he made it for the purpose of obtaining a driving licence for Mr. Lee. He therefore committed an offence in contravention of section 137(1)(a) of the Road Traffic Ordinance, 1958. We accordingly alter the conviction in his case to one for that offence and we alter the convictions as to the second and third appellants to abetment of that offence in contravention of section 139 of the Ordinance. On each of them we impose the same sentences as were imposed at the trial.

Order accordingly.

ISMAIL v. PUBLIC PROSECUTOR

[A. Cr. J. (Hashim J.) April 22, 1963]

[Kuala Trengganu — Criminal Appeal No. 1 of 1963]

Penal Code, ss.354, 511 — Attempt to outrage modesty of person — Solicitation for sexual intercourse — Criminal force — Evidence of.

Criminal Procedure Code (Cap. 6), s.173A — Exercise of powers by Magistrate under s.173A — Suitable sentence in such cases.

The appellant, a postman, was charged under sections 354 and 511 of the Penal Code. The complainant said in evidence that the accused pulled out $5.00 and said: "Even if you are married take this money." The learned Magistrate convicted the accused and in exercising his powers under section 173A of the Criminal Procedure Code ordered the appellant to execute a "bond of good behaviour in one surety for a period of 10 months." On appeal,

Held: (1) no evidence was adduced to suggest that the appellant intended to use criminal force on the complainant;

(2) the words "Even if you are married take this money", coupled with the offer of $5.00, were so vague that it was not possible to say with certainty that there had been a solicitation for sexual intercourse.

CRIMINAL APPEAL.

Maidin bin Mohamed Ibrahim for the appellant.

Abdul Hamid bin Haji Omar (Deputy Public Prosecutor) for the respondent.

Hashim J.: The appellant was charged under sections 354 and 511 of the Penal Code. He claimed trial. The learned Magistrate found him guilty and convicted him. For some odd reason the learned Magistrate exercised his powers under section 173A of the Criminal Procedure Code and ordered appellant to execute "a bond of good behaviour in one surety at $200 for a period of 10 months"; a most extraordinary sentence. One does not record a conviction under section 173A of the Criminal Procedure Code. The appellant at the material time was a postman and went to Kampong Ayer Puteh to deliver letters. As the learned Magistrate "convicted" the appellant he therefore accepted the evidence of the woman, Mek binte Jumaat *in toto* and found the appellant guilty of the offence for which he was charged. The learned Magistrate should have imposed a deterrent sentence to deter other postmen from molesting women in remote and lonely areas. Kampong Ayer Puteh is about 19 miles from Kemaman Town.

The evidence of Mek binte Jumaat was that on 25.10.62 she was sweeping the rubbish behind her house in her compound. She was alone and had only a sarong on tied up to her breast. The appellant came and asked her where a neighbour Rahmat or his wife had gone. She told the appellant Rahmat and his wife were not at home and she did not know where they had gone. Appellant then went up to about 3 feet to Mek. Mek retreated a little. Appellant became pale and Mek interpreted this facial expression as an intention to "disturb" her. She went underneath the house. Appellant went to the front steps of the house. He asked Mek whether she was single or married. Mek told him she was married. He then pulled out $5 and said: "Even if you are married take this money" Mek refused and ran away towards the river. Two witnesses saw Mek running towards the river. The defence was a complete denial. Appellant stated on oath that he went to the village on duty and enquired after Rahmat from Mek. Mek told him that Rahmat had gone to work at the river. He went to the river in search of Rahmat.

In my opinion the charge was badly drafted. The charge was that the appellant attempted "to use criminal force to one Mek binte Jumaat, a woman intending to outrage the modesty of the said woman by such act". "Criminal force" is defined in section 350, Penal Code as follows:—

"Whoever intentionally uses force to any person, without that person's consent, in order to cause the committing of any offence, or intending by the use of such force illegally to cause, or knowing it to be likely that by the use of such force he will illegally cause injury, fear, or annoyance to the person to whom the force is used, is said to use criminal force to that other."

No evidence whatsoever was adduced to suggest that appellant intended to use criminal force on Mek. If Mek's evidence is accepted all the appellant did was to pull out $5 and said: "Even if you are married take this money." These words coupled with the offer of the $5 could give rise to the inference that it was a solicitation for sexual intercourse. If Mek had accepted the offer, in my opinion, no offence would be committed under the civil law but possibly under section 135 of the Administration of Islamic Law Enactment, 1955 (Trengganu).

In my opinion even if Mek's evidence is accepted the words uttered by the appellant are so vague that one cannot say with certainty that there has been a solicitation for sexual intercourse. Mere probability is not sufficient in a criminal case to sustain a conviction. The appeal is therefore allowed and the finding and sentence of the learned Magistrate reversed.

Appeal allowed.

MOHAMED LAJAN v. DAUD

[O.C.J. (Gill J.) April 22, 1963]

[K.L. — Selangor Civil Appeal No. 10 of 1962]

Tort — Respondent stopping appellant from plucking and disposing of coconuts — Appellant taken to police station for interrogation — Whether false imprisonment — Whether appellant entitled to damages.

Evidence — Unregistered lease — Whether admissible for collateral purpose of showing nature of possession.

In 1944, the appellant in partnership with two men bought a piece of land from one M.H. The land was not registered in the appellant's or his partners' names although he had possession until about 1953 when he moved to another place. M.H. died in 1946 and his son paid the land rent in 1956. In 1960, the son leased the land to the respondent.

On April 26, 1960, the appellant was plucking coconuts on the land when the respondent appeared and stopped him from doing so. The appellant took the coconuts to a kampong where the defendant, in the presence of many people stopped him from selling the coconuts. The appellant left the coconuts there and went home. The respondent reported to the police that the appellant had stolen his coconuts. At about 6 p.m. on the day the appellant was asked by a Police Sergeant to go to the police station where he had to wait for some time before he was interrogated by the police. After the interrogation he was told to go home.

In an action for false imprisonment and defamation, the learned President held that (1) there was neither arrest nor imprisonment, (2) the statement that the appellant had stolen the coconuts was not defamatory because the respondent's lease showed that he had a genuine belief that he had the right of possession of the coconuts and that the appellant had not. On appeal, the allegation of defamation was abandoned.

Held: (1) there was no false imprisonment in this case but even if there was any false imprisonment committed by the police, the respondent was not liable as he did not ask or order the police to do so;

(2) the appellant was also not falsely imprisoned on the land or in the kampong;